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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1147th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 March 1996, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3 p.m.

CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION (agenda item 7) (continued)

1. The CHAIRMAN informed the Committee that a response had been received from a State party concerned by two or more of the communications pending, which could therefore be taken up at the Committee's next session. One of the other communications had been withdrawn from the list because the case had been settled in the State in question.

2. Mr. DIACONU asked whether the communication had been withdrawn by the author or by the State.

3. Mr. O'FLAHERTY (Secretary of the Committee) said that, according to information received that day from the State party, the case had been resolved through a domestic procedure and accordingly no longer needed to be considered by the Committee.

4. Mr. DIACONU said that it was not sufficient for the State party to indicate that the case had been dropped; the Committee needed to know whether the complainant considered the case to have been resolved and was willing to withdraw the complaint.

5. The CHAIRMAN took it that it would be acceptable for him to have further inquiries made and report back to the Committee.

6. It was so agreed.

DRAFT GENERAL RECOMMENDATIONS

Draft general recommendation on article 5 (CERD/48/Misc.6/Rev.2)

7. Mr. WOLFRUM, speaking as sponsor of the revised draft before the Committee, said that he had sought to accommodate the views and suggestions of members, in particular concerning paragraph 5. In the penultimate sentence of paragraph 1, he proposed, at the suggestion of Mr. Chigovera, that the words "proceeds from" should be replaced by "assumes", so that the sentence would read "Article 5 of the Convention [...] does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights". Explaining the changes he had made to paragraph 5, whose wording had been seen as too abstract and legalistic, he said that the first sentence was unchanged and the second sentence, reading "Such protection may be achieved by applying different means, be it by use of public or of private institutions", was substantially the same as in the previous version. The third sentence was self-explanatory. The fourth and final sentence reflected an issue that had been repeatedly stressed by the Committee, namely that vesting private institutions with certain functions in no way detracted from the obligations accepted by a State party under the Convention.

8. The draft general recommendation on article 5 was an agenda item of long standing and he did not believe that there was much room for improvement to the wording. He suggested that any proposals should be in the form of specific amendments and hoped that a consensus would be achieved without delay.

9. Mr. DIACONU proposed that the first sentence of paragraph 2 should end with the words "of the Convention" to be inserted after "article 1". The phrase "or otherwise with international human rights standards" should be deleted, since such standards were not the concern of the Committee. The words "Most of the rights" at the beginning of paragraph 3 should be replaced by "Some of the rights", since it was difficult to ascertain how many of those rights, such as economic, social and cultural rights, were to be enjoyed by all persons living in a given State. Allowance should be made, for example, for differences between developed and developing countries in their treatment of citizens and non-citizens. Although he shared the views reflected in paragraph 5, he had misgivings about the word "use", in the second sentence, in relation to private institutions. He therefore suggested that the phrase "be it by use of public or of private institutions" should be deleted, since in any case the idea it expressed was reflected in the rest of the paragraph.

10. Mr. WOLFRUM, supported by Mr. DIACONU, agreed to a suggestion by the CHAIRMAN that "Many" would be preferable to "Most" or "Some" in paragraph 3. Regarding the wording of paragraph 5, he agreed that the deletion proposed by Mr. Diaconu would not change the substance, but it might make the paragraph less intelligible to the reader. He pointed out that, although a State normally fulfilled its functions through public institutions, many countries also had recourse to independent private institutions or mechanisms, in such areas as health care, banking or insurance, and it was the State's duty to ensure that their practices, too, were in no way discriminatory.

11. Regarding Mr. Diaconu's proposal to delete the reference to international human rights standards, he pointed out that there might well be cases of discrimination in respect of international human rights standards that were not expressly spelled out in article 5 of the Convention. His intention had been to specify that there must be no racial discrimination in regard to any international human rights standards.

12. The CHAIRMAN suggested that, to accommodate Mr. Diaconu's objection to the word "use" in the second sentence of paragraph 5, which he assumed was also relevant to the word "applying" in the same sentence, the sentence should read "Such protection may be achieved in different ways, be it by public or private institutions".

13. Mr. DIACONU proposed that the latter part of the sentence, after "in different ways", should read "be it by the use of public institutions or through the activities of private institutions". In paragraph 2, he proposed that the last part of the first sentence should read "is incompatible with article 1 of the Convention as an integral part of international human rights standards".

14. The CHAIRMAN suggested that the word "any" should be inserted before "such restriction" in the last sentence of paragraph 2.

15. Mr. GARVALOV proposed that, for the sake of consistency, the words "of the Convention" should also be added after the reference to article 5 in paragraph 2.

16. Mr. WOLFRUM agreed, adding that the words "of the Convention" should be inserted after all references to articles in the text.

17. Mr. FERRERO COSTA called for a prompt decision on the text, since there appeared to be no substantive objections.

18. Following a request for clarification of the proposed amendments by Mr. VALENCIA RODRIGUEZ, Mr. WOLFRUM read out the amendments on which there appeared to be a consensus.

19. Mr. van BOVEN said he took it that stylistic improvements to the whole text would be made at the editing stage. Although the recommendation to States parties in paragraph 4 that they should report on the implementation of each of the rights and freedoms referred to in article 5 one by one appeared self-evident, experience had shown that States parties which also submitted reports to the Human Rights Committee did not always see the necessity of reporting separately on economic, social and cultural rights specifically from the perspective of racial discrimination, as required by the Convention. For the sake of clarity, therefore, a formula such as "from the perspective of their obligations under the Convention" might usefully be added to the text.

20. Mr. YUTZIS agreed with Mr. Ferrero Costa that the Committee should not dwell on stylistic changes if it agreed on the substance of the draft.

21. The CHAIRMAN said he took it that the Committee was in favour of Mr. van Boven's proposed amendment to paragraph 4, subject to the choice of an acceptable form of words, and that it approved the draft general recommendation as a whole, as amended.

22. It was so agreed.

Draft general recommendation on aspects of article 2 (CERD/48/Misc.7/Rev.3)

23. Mr. WOLFRUM, introducing the draft general recommendation on aspects of article 2, said that it was important to clarify the Committee's stance on secession by ethnic or religious groups or minorities on the basis of their right to self-determination. He hoped that the draft could be adopted by the end of the meeting, if possible by consensus, but by a vote if necessary. The subject had come up in discussions with non-governmental organizations (NGOs) and the Committee should make plain its opposition to secession on such a basis. General Assembly Declaration 2625 (XXV) on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations was one of the principal texts on which the draft had been based, in an effort to strike a balance that would reflect contemporary circumstances.

24. Mr. RECHETOV said that, while he would not stand out against the will of the Committee on a topic of such importance, he did not wish to be a sponsor of the draft recommendation as it stood. He questioned, for example, whether there was a real distinction between the "external" and "internal" aspects of self-determination, as paragraph 3 implied. It was not clear, from a reading of the last sentence of that paragraph, whether the "principles of equal rights" referred to human rights or to the rights of peoples and nations; if the latter, the reader would assume that the Committee supported the right of minorities to secede.

25. Mr. VALENCIA RODRIGUEZ suggested that paragraph 3 should be split into two paragraphs. The new paragraph 4 should begin with the words "In respect of the self-determination of peoples". It should be made quite clear that the Committee was not in the business of encouraging secession. A State that failed to guarantee equal rights and represent the entire population could face the danger of dismemberment or secession. Even the perception that those conditions had not been met could prompt secessionist tendencies among minorities, and he was concerned that the recommendation as it stood might convey the impression to such minorities that they were entitled to secede.

26. Mr. CHIGOVERA said that, to his knowledge, the Committee had no mandate to make pronouncements on self-determination. The Third Committee of the General Assembly had kept self-determination quite separate from racial discrimination in its deliberations on the matter, and had been far from unanimous in its assessment of the scope of the right to self-determination.

27. Mr. van BOVEN said that the nub of the draft was the statement in the last paragraph that, in the Committee's view, "international law has not recognized a general right of peoples to unilaterally declare secession from a State". With regard to the objections raised by Mr. Chigovera, he drew attention to the fourth preambular paragraph of the Convention, which had been adopted at the height of the struggle against colonialism in the 1960s. Some dependent territories remained, but decolonization was nearly complete. The right of self-determination, however, was not exhausted and the draft general recommendation should be seen in that light. The wording of the sentence to which Mr. Rechetov had referred was based on the Declaration already cited. The reference to the "liberation of peoples from colonialism" and the "prohibition to subject peoples to alien subjugation, domination and exploitation" illustrated the external aspects of self-determination and therefore represented an essential part of the text of the draft general recommendation.

28. Mr. DIACONU considered that the text raised difficulties both of principle and of legal interpretation. The second sentence of paragraph 3 seemed to imply that the recommendation was addressed to minorities within States, not the States themselves. Given the difficulty of deciding whether and to what extent a minority was a people, the suggestion in paragraph 4 that Governments should consider "vesting persons of ethnic or linguistic groups ... with competence to administer affairs which are particularly relevant to the preservation of the identity of such groups" raised delicate issues, on which the Committee's enterprise might well founder.

29. Mr. GARVALOV said that it was within the Committee's purview to express its views on secession. It always asked States parties about the ethnic composition of their populations and had been critical of States that had fallen short of the Convention's criteria. In the cases of Kosovo and the Chechen Republic, for example, the views expressed by the Committee had included opposition to demands for secession. He recognized that there were two schools of thought regarding ethnic minorities and that the Committee might sometimes have been perceived to be inadvertently encouraging ideas of independence among minorities. For that reason, the Committee should make it clear that it stood firmly against secession or the impairment of the integrity of independent States. Minorities should enjoy a measure of autonomy, but that did not extend to the right of self-determination as applied to former colonial countries.

30. The CHAIRMAN, responding to Mr. Diaconu's remarks as a member of the Committee, said that the need for the draft general recommendation had arisen as a result of developments in the Committee's work. The Committee had considered situations in which racial discrimination was only one element of a country's treatment of its minorities, but had found that article 1 gave insufficient guidance on the matter. Agreement on the recommendation would facilitate the ongoing work on the urgent action and early warning procedures. It would be addressed to States as an information document rather than a proposal for action.

31. Mr. FERRERO COSTA said that the purpose of the draft was to clarify the Committee's position on an extremely complex subject that came up frequently in its work. On the whole, the document was satisfactory. Paragraph 5, in particular, made it quite clear that the Committee did not support groups that were trying to secede from or dismember a State. The Committee was defending the territorial integrity and political unity of sovereign and independent States but, at the same time, urging that consideration be given to the internal self-determination and development of ethnic groups and minorities. In the event of a vote, he would be in favour of the text as it stood.

32. Mr. YUTZIS agreed that the draft was unambiguous in stating the Committee's position on the secession of minority ethnic groups and peoples. However, the emphasis placed on article 2 of the Convention weakened the intended message by understating the relevance of the Convention as a whole to the rights of ethnic groups. The text would be acceptable if certain drafting changes were made.

33. Mr. WOLFRUM, referring to comments made by members of the Committee, said that the draft general recommendation should be read as a whole because in its entirety it was a balanced document. The proposal that paragraph 3 be split into two was perfectly acceptable in that the text would be more readable. Equally valid was the suggestion that "principles" in the last sentence of paragraph 3 should be replaced by "principle". The objection to the last sentence of paragraph 4 was difficult to accept since the wording was not strong to begin with. Paragraph 5 was not likely to encourage ethnic minorities or peoples unilaterally to secede from a State. One of the purposes of the draft was to deal with the external aspect of self-determination, which was not adequately covered by the Convention, and thus provide the Committee with a firm basis for its work.

34. Mr. DIACONU said that he could not accept the reference to article 2 of the Convention in the title of the draft. Similarly, the second sentence of paragraph 3 should be deleted since it gave a false interpretation of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. The Declaration itself should be cited in paragraph 4 rather than paragraph 3. The reference to "political status" should be transposed from the fifth to the last sentence of paragraph 3, which would then read: "The external aspect of self-determination implies that all peoples have the right to determine freely their political status, their place in the international community based upon the principles of equal rights ...".

35. In paragraph 4, the phrase "the aspirations of persons" should be replaced by "the rights of persons" and at the end of the paragraph, "competence to administer affairs" should be replaced by "the right to deploy such activities". In paragraph 5, "possessed of" should be replaced by "possessing".

36. Mr. AHMADU said that the draft seemed like a charter for many ethnic groups, especially in the third world, to secede. The importance of paragraph 5 needed to be highlighted, but overall difficulties of interpretation detracted from the value of the text and might even exacerbate the problems of countries which had to deal with secessionist agitators.

37. Mr. RECHETOV said that the Committee should adopt the draft general recommendation by consensus on the understanding that drafting changes could be made subsequently.

38. Mr. CHIGOVERA said that his reservations had not been dispelled by the debate. Regarding the reference to the fourth preambular paragraph of the Convention, the meaning of self-determination in the decolonization context was unlike the much wider meaning assigned to that term in the draft. It had been suggested in the Third Committee that further studies should be carried out into the new arguments surrounding the meaning of self-determination. In the event of a vote on the text, he would abstain.

39. Mr. WOLFRUM proposed a number of oral amendments to the draft general recommendation. The second sentence of paragraph 3 would be amended to read: "But the implementation of the principle of self-determination requires every State to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter". The fourth sentence of paragraph 3 would become the first sentence of the new paragraph 4, and the following paragraphs would be renumbered accordingly. In the new paragraph 4 the words "to determine freely their political status and" would be deleted from the second sentence, and in the fifth sentence the words "their place" would be expanded to read "their political status and place"; in the same sentence, the word "principles" would be replaced by "principle". In the third sentence of the new paragraph 5, the word "aspirations" would be replaced by "rights". In the new paragraph 6, the words "possessed of" in the eighth line would be replaced by "possessing".

40. Replying to a point raised by Mr. RECHETOV, he said that the reference to political status was understood to cover internal and external aspects alike.

41. Mr. DIACONU further proposed that, in the new paragraph 5, the words "and other relevant international documents" should be added at the end of the first sentence and that the words from "competence to administer" to the end of the last sentence should be replaced by "the right to engage in such activities which are particularly relevant to the preservation of the identity of such persons or groups".

42. The CHAIRMAN said he took it that the Committee wished to adopt the draft general recommendation, as orally amended, by consensus.

43. It was so decided.

ORGANIZATION OF WORK

44. Mr. YUTZIS said that the latest revision to the proposed programme of work did not give a timetable for discussion of early warning and urgent procedures or of matters relating to article 14 of the Convention.

45. Mr. WOLFRUM said that the Committee should receive a briefing, in a public meeting, on the situation in Rwanda.

46. Mr. GARVALOV said that consideration should also be given to the question of uniform texts of concluding observations and declarations by States parties under article 14.

47. Following a discussion in which Mr. WOLFRUM, Mr. GARVALOV, Mr. RECHETOV, Mr. DIACONU, Mr. CHIGOVERA, Mr. VALENCIA RODRIGUEZ, Mr. van BOVEN, Mr. YUTZIS and Mr. O'FLAHERTY (Secretary of the Committee) took part, the CHAIRMAN said that the timetable in respect of those matters would be considered at the Committee's next meeting and that, in the meantime, members were invited to study the various draft concluding observations, which had been circulated, with a view to transmitting their comments as quickly as possible to the respective country rapporteurs.

The meeting rose at 5.55 p.m.